REMARKS/ARGUMENTS

Claims 1, 3, 5-9, 13-15 and 17-20 are pending in the above-identified application. Non-elected claims 11, 12 and 16 have been canceled. Claim 2, 4, and 10 have also been canceled.

Applicant appreciates the withdrawal of rejections in the prior Office Action that were not carried forward. The only rejection which remains is that of obviousness-type double patenting, discussed below.

Double Patenting

Claims 1-10 and 13-15 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5,382,431 (the '431 patent) in view of claims 1 and 3-7 of U.S. Patent No. 5,888,522 (the '522 patent). Although the Examiner acknowledged that the conflicting claims were not identical, they were regarded by the examiner as not patentably distinct from the instant claims. Applicant respectfully traverses.

The Office suggests that a terminal disclaimer may be used to overcome the rejection provided the conflicting application or patent is shown to be commonly owned with the present application. The present application is commonly owned with the two cited U.S. patents, US 5,382,431 and US 5,888,522. 37 CRF §1.130(a) permits the use of a terminal disclaimer to disqualify commonly owned patents as prior art when the U.S. patent (or published application) is not available as prior art under 35 USC §102(b). In the present case, the two patents cited by the Examiner, US 5,382,431 and US 5,888,522, have issue dates of January 17, 1995, and March 30, 1999. The instant application claims as its earliest priority the provisional application 60/239,831 filed October 11, 2000. Thus, in the absence of additional information or an earlier claim for priority, it is not believed that a terminal disclaimer would effectively obviate the obvious-type double patenting rejection in the present application. Accordingly, the basis for the rejection is respectively traversed.

The basis for the rejection is said to be that it is well accepted in the medical arts that skin blemishes read upon a type of skin wound, and therefore it would have been obvious to treat skin blemishes (wounds) via the claimed method of the '431 patent. The Office has not provided a reference to support the statement that scars read on a type of wound. Indeed, a scar is the result of the healing process a wound undergoes and is not believed to be considered a wound in itself.

Claim 1 was previously amended to more clearly recite that the skin blemish being remodeled is a scar, by administering an amount of the peptone-ionic metal digest sufficient to diminish or remove the scar. Treatment of a scar to diminish or remove its appearance is a very different indication from the treatments disclosed and claimed in the cited '431 and '522 patents. One of ordinary skill would not expect to treat thickened scar tissue and remove or diminished its appearance as opposed to treatment of a topical skin wound. These wounds typically involve broken skin and it is necessary to stop or diminish bleeding and the ensuing inflammation, and facilitate closure of the wound so the underlying skin can be permitted to heal.

The treatment of scars is not obvious in view of the treatment of skin wounds. Scars and other blemishes such as skin tags, calluses, benign moles and the like are typically treated by physical removal, such as scar subcision, laser ablation, surgical removal, deep chemical peels, dermabrasion, etc. The Office has not pointed to any teaching or even suggestion in the cited references that the scars and blemishes commonly treated by these alternative methods can be effectively addressed by the compositions disclosed in the cited references.

The present invention accelerates remodeling of skin without the necessity for such dramatic, painful and often ineffective "chemical peels," surgical treatments or the like. Likewise, the present invention avoids the use of other chemicals that can increase skin breakdown and resynthesis, such as retinol and retinoic acid. The benefits provided by the present invention in avoiding these often used approaches are not even suggested by the cited references.

As with claim 1, the treatment recited in claim 17 of other skin blemishes such as moles, skin tags, stretch marks, facial keratosis, thickened sunspots of the skin, or vitiligo spots is regarded to involve different factors from the treatments of topical wounds, oxidative damage, and the like mentioned in the '431 and '522 patents and the claims thereof.

In view of the differences between the instantly claimed invention and that which is disclosed and claimed in the '431 and '522 patents and the absence of a suggestion in the cited patents of the presently claimed invention, reconsideration and withdrawal of this basis of rejection is respectfully requested.

CONCLUSION

In view of the foregoing, Applicant believes all claims now pending are in condition for allowance. The issuance of a formal Notice of Allowance is respectfully requested. If the Examiner believes a telephone conference would facilitate prosecution of this application, please telephone the undersigned at 206-467-9600.

Respectfully submitted,

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